

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

IRIS CALOGERO, individually and on behalf of all others similarly situated, and MARGIE NELL RANDOLPH, individually and on behalf of all others similarly situated

v.

SHOWS, CALI & WALSH, LLP, a Louisiana limited liability partnership; MARY CATHERINE CALI, an individual; and JOHN C. WALSH, an individual

CIVIL ACTION

NO. 2:18-cv-06709

SECTION “M” DIVISION “3”

JUDGE: BARRY W. ASHE

**MAGISTRATE JUDGE:
DANA M. DOUGLAS**

PLAINTIFFS’ SECOND AMENDED COMPLAINT – CLASS ACTION

NOW INTO COURT, come Plaintiffs Iris Calogero and Margie Nell Randolph (collectively, “Plaintiffs”), by and through undersigned counsel, who allege upon knowledge as to themselves and their own acts, and upon information and belief as to all other matters, and bring this complaint against Defendants: Shows, Cali & Walsh, LLP; Mary Catherine Cali; and John C. Walsh (collectively, “Defendants”) and in support thereof allege the following:

INTRODUCTION

1. This action seeks class-wide relief pursuant to the Fair Debt Collection Practices Act (“FDCPA”) for the unlawful, unfair and deceptive conduct of defendant law firm and its attorneys. Plaintiffs are homeowners whose residences were damaged by Hurricanes Katrina or Rita in 2005. In exchange for their several commitments to the state and federal governments, Plaintiffs received grants from the Louisiana Road Home Program (“Road Home”). The Road Home was established by the State of Louisiana to administer federal funds appropriated by Congress for hurricane relief. Years after repairing their homes, Plaintiffs received debt collection letters from Defendants, who claim that Plaintiffs owe money because they allegedly breached

their grant agreements by allegedly receiving undisclosed payments from their insurers and/or the Federal Emergency Management Agency (“FEMA”) which had not been considered in calculating the grant amounts.

These letters violate the FDCPA, 15 U.S.C. 1692 *et seq.* in at least two ways. First, Defendants’ letters failed to properly identify the purported debt, which confused Plaintiffs, obscured their assessment of the claims, and impeded their defense. Second, Defendants’ letters threatened legal action on time-barred debts, which unfairly induced grantees to pay money they did not owe, and may never have owed. This conduct violates subsections (2)(A), (5), and (10) of §1692e, *False or misleading representations*, and also violates §1692f, *Unfair practices*. Defendants’ conduct, and such additional FDCPA violations as may be identified through discovery, caused Plaintiffs damage, including but not limited to: spending resources to learn the truth and paying money that is not owed.

JURISDICTION AND VENUE

2. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 because this action involves a federal question under the FDCPA.

3. Venue is proper pursuant to 28 U.S.C. § 1391(b) because Plaintiffs and Defendants reside and/or do business in the Eastern District of Louisiana. Venue is also proper in this District because the acts and transactions that give rise to this action occurred, in substantial part, in the Eastern District of Louisiana.

PARTIES

4. Plaintiff Iris Calogero is a natural person residing in Slidell, Louisiana.

5. Plaintiff Margie Nell Randolph is a natural person residing in New Orleans, Louisiana.

6. Plaintiff Calogero and Plaintiff Randolph are each a “consumer” as defined by the FDCPA, 15 U.S.C. § 1692a(3).

7. Plaintiffs each allegedly owe a (past due) consumer debt as defined by the FDCPA, 15 U.S.C. § 1692a(5).

8. Defendant Shows, Cali & Walsh, LLP (“SCW”) is a Louisiana limited liability partnership which regularly collects or attempts to collect debts owed or due or asserted to be owed or due another.

9. Defendant Mary Catherine Cali (“Ms. Cali”) is an attorney and is a partner at SCW. Ms. Cali regularly collects or attempts to collect debts owed or due or asserted to be owed or due another.

10. Defendant John C. Walsh (“Mr. Walsh”) is an attorney and is a partner at SCW. Mr. Walsh regularly collects or attempts to collect debts owed or due or asserted to be owed or due another.

11. Defendants SCW, Ms. Cali, and Mr. Walsh are each a “debt collector” as defined by the FDCPA, 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

12. Plaintiffs incorporate by reference and re-allege each and every allegation contained above, as though fully set forth herein.

THE FDCPA PROHIBITS DEBT COLLECTORS FROM MAKING FALSE OR MISLEADING REPRESENTATIONS AND FROM USING UNFAIR PRACTICES.

13. The FDCPA was enacted to eliminate abusive debt collection practices by debt collectors. 15 U.S.C. § 1692(e). By enacting the FDCPA, Congress created a statutory right for consumers to be free from such prohibited practices.

14. Prohibited practices include the use of “false, deceptive or misleading representation or means in connection with the collection of any debt” (15 U.S.C. § 1692e) and the use of “unfair or unconscionable means to collect or attempt to collect any debt” (15 U.S.C. § 1692f).

15. Specifically, a debt collector is prohibited from misrepresenting the “character, amount, or legal status of any debt.” 15 U.S.C. § 1692e(2)(A). A debt collector is also prohibited from threatening to take any action that cannot legally be taken, or that is not intended to be taken. 15 U.S.C. § 1692e(5). In addition, a debt collector is not allowed to use any false representation or deceptive means to collect or attempt to collect a debt. 15 U.S.C. § 1692e(10).

16. In addition to representing information accurately, a debt collector must also clearly and fairly communicate information about the amount of the debt. Providing an itemization of the various charges that comprise the total amount of the debt is one way to clearly and fairly communicate the information that a debtor needs in order to make an intelligent choice about how to address the alleged debt.

17. The FDCPA also protects consumers from collection of a time-barred claim. Such collection effort constitutes an unfair and deceptive attempt to collect on a debt, particularly where the debt collector’s letter includes a threat of litigation and does not disclose that the debt is judicially unenforceable or that payment on the time-barred debt may revive the applicable statute of limitations. 15 U.S.C. §§ 1692e, 1692f.

THE ROAD HOME PROGRAM PROVIDED THOUSANDS OF FEDERALLY-FUNDED GRANTS TO LOUISIANA HOMEOWNERS DAMAGED BY HURRICANES KATRINA AND RITA.

18. In 2005, two major hurricanes devastated the Gulf Coast, including Louisiana. Hurricane Katrina made landfall on August 29, 2005; Hurricane Rita made landfall on September 24, 2005 (collectively, “the 2005 Hurricanes”).

19. The storm devastation created an unprecedented housing crisis.

20. In response, on or about December 30, 2005, Congress appropriated billions of dollars in disaster relief through the U.S. Department of Housing and Urban Development's (HUD) Community Development Block Grant (CDBG) program to affected areas in five states, including Louisiana. DEPARTMENT OF DEFENSE, EMERGENCY SUPPLEMENTAL APPROPRIATIONS TO ADDRESS HURRICANES IN THE GULF OF MEXICO AND PANDEMIC INFLUENZA ACT, 2006, Pub. L. 109-148; 119 Stat. 2779-81.

21. Congress subsequently authorized additional appropriations of federal funds for hurricane recovery on the Gulf Coast. In 2006, Congress passed the EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT FOR DEFENSE, THE GLOBAL WAR ON TERROR, AND HURRICANE RECOVERY, 2006, Pub. L. 109-234, 120 Stat. 472-73 (appropriating federal funds to HUD for administration by the several states impacted by the 2005 Hurricanes). In 2007, Congress passed Pub. L. 110-116, 2007, 121 Stat. 1343 (appropriating additional federal funds to HUD for the purpose of making grants to the State of Louisiana for the sole purpose of covering costs related to the Road Home program "in accordance with plans approved by the Secretary" of HUD).

22. HUD's authority to make CDBG funds available to states and local governments arises from the Housing and Community Development Act of 1974 (HCDA), 42 U.S.C. § 5301 *et seq.*

23. The HCDA vests in state and local governments the power to allocate federal fiscal resources for the purpose of achieving congressionally established goals.

24. In accepting the responsibility for distributing these federal fiscal resources, grant-awarding entities assume the quintessentially official role of administering a social service program established by the United States Congress.

25. Where partial administration of the federal program, including the actual distribution of federal funds, is delegated to state and local authorities, HUD maintains extensive controls and oversight of local administration of the funds, dictating eligibility of grant recipients, the purposes for which grants may issue, and detailed performance requirements. HUD audits administration of the federal funds and may take corrective actions that range from issuing a warning letter to instituting collections procedures to recover improperly expended funds. 42 U.S.C. § 5311(a); 24 C.F.R. §§ 570.496(b),(d).

26. HUD delegated to the State of Louisiana the distribution of federal funds appropriated to its CDBG for hurricane relief from the 2005 Hurricanes.

27. To receive CDBG funds, recipient state and local authorities must go through an application and approval process.

28. In early 2006, Louisiana applied to HUD for CDBG funds for hurricane relief. Louisiana supplemented its application with a detailed action plan proposing the Road Home Program.

29. On or about May 30, 2006, then-HUD Secretary Alphonso Jackson approved the State of Louisiana's proposal to create The Road Home Program to distribute federal funds for hurricane relief to Louisiana homeowners.

30. Once approved by HUD, the Road Home Program was administered by the Louisiana Office of Community Development (OCD) and the Louisiana Recovery Authority, subject to ongoing supervision and control by HUD.

31. HUD required the State of Louisiana to adhere to multiple federal laws, regulations, guidelines, and policies ("Federal Regulations") in its design and administration of the program. HUD conducted regular audits and other reviews of the State's performance, and held the State to

its obligation of compliance with the Federal Regulations. HUD retained the right to intervene in the case of any misuse of grant funds.

32. The Road Home grant funds retained their character as federal funds. *See*, **Exhibit 1** hereto.

33. The Road Home issued multiple types of federally-funded grants to Louisianans affected by the 2005 Hurricanes. One type of grant was for homeowners whose residences were storm-damaged (“Homeowner’s Grant”). The purpose of the Homeowner’s Grant was to compensate for damages incurred and to mitigate against future damage from hurricanes and similar natural disasters.

34. The Road Home awarded thousands of federally-funded Homeowner’s Grants in exchange for Louisiana homeowners’ several commitments to the state and federal governments, as detailed in the documents executed by each grant recipient.

FACTUAL ALLEGATIONS PERTAINING TO PLAINTIFFS CALOGERO AND RANDOLPH

35. On May 11, 2007, Plaintiff Calogero entered into a contract with the OCD to obtain a HUD Road Home Homeowner’s Grant. *See*, **Exhibit 2** hereto.

36. On June 30, 2007, Plaintiff Randolph entered into a contract with the OCD to obtain a HUD Road Home Homeowner’s Grant. *See*, **Exhibit 3** hereto.

37. Both Agreements provide that their purpose is:

to provide compensation for damages incurred by the Homeowner(s) due to Hurricane Katrina in August 2005 and/or Rita in September 2005. Funding for this grant comes from the Community Development Block Grant (CDBG) program administered through the U.S. Department of Housing and Urban Development. CDBG funds have been allocated to the State of Louisiana’s Office of Community Development and are being provided to eligible residents of the State through *The Road Home* program.

Exhibits 2, 3.

38. On information and belief, the amounts of Plaintiffs' grants were calculated on the basis of their qualified damages, less certain amounts received either from insurance or from FEMA. The avoidance of duplicative payments for losses is required by the Stafford Act, 42 U.S.C. § 5155, with which HUD required compliance. In their grant applications, Plaintiffs were asked to disclose the sums received from such third-party sources.

39. Both Agreements contain a provision acknowledging that the grant funds may have been released before the State verified Plaintiffs' statements of third-party payments, and that in case of erroneous reportage or supplemental third-party payment, grant funds might have to be repaid. Both Agreements also contain an enforcement provision notifying Plaintiffs that they "may be prosecuted by Federal, State and/or local authorities in the event that Homeowner(s) make or file false, misleading and/or incomplete statements and/or documents." *Id.*

40. Both Agreements also contain a separate form subrogation agreement which states an obligation to repay sums that would have been used to reduce the amount of the Road Home grant "[i]f I/we hereafter receive any Federal assistance Payments...[and/or] insurance payments." The subrogation agreement provides that "[i]n any proceeding to enforce this agreement, the State shall be entitled to recover all costs of enforcement, including actual attorney's fees and court costs."

41. Both agreements also contain a separate form affidavit declaring that if FEMA or insurers have paid to the grant recipient "amounts in excess of the amount disclosed by me/us, I/we agree to repay the Grant, or portion thereof, which I/we received as a result of my/our providing the incorrect information." The affidavit contains no provision for attorney's fees in the event that suit were brought against the affiant to enforce the agreement.

42. From 2006 until the spring of 2009, OCD subcontracted much of the work involved in administering Road Home grants to ICF Emergency Management Services, LLC (“ICF”). ICF’s responsibilities included gathering information about Insurance and FEMA payments to applicants for Homeowner’s Grants, inputting such information into data systems, and calculating Homeowner’s Grant awards.

43. In 2007, the federal HUD Office of Inspector General (“OIG”) audited the Road Home and found that ICF was not performing its duties adequately and that the State was not adequately monitoring ICF’s performance. In 2008, another OIG audit found further errors in ICF’s system controls that had permitted the disbursement of grants to ineligible recipients. OIG also noted coding and input errors in some of these files. Several months later, yet another OIG audit found that the State had not ensured compliance by ICF with policies and procedures related to the Road Home’s additional compensation grant program, again resulting in grant disbursements to ineligible parties.

44. In 2009, ICF’s contract expired and was not renewed by the State. In the course of a closeout contractual review, ICF identified thousands of grant recipients who had received overpayments as a result of errors in ICF’s handling of files, determinations of eligibility, calculations of grant awards, and disbursements of funds. Thereafter, OCD conducted a further review and discovered additional errors. In 2016, the State sued ICF for breach of contract, alleging that the state was obliged by its CDBG agreement to seek the return of grant payments to ineligible recipients or in amounts greater than the recipients were eligible to receive. *State through the Division of Administration v. ICF Emergency Management Services, LLC*, No. 649023 on the docket of the 19th Judicial District Court for the Parish of East Baton Rouge, State of Louisiana.

45. In or before 2017, Defendants began sending collection letters to recipients of Homeowner's Grants in an attempt to recover allegedly overpaid awards.

46. Despite the ICF's questionable performance in the matter of data entry and review, Defendants relied upon ICF's entries concerning the existence and amounts of grant overpayments made as a result of duplicated insurance and FEMA benefits.

47. Defendants had no means of determining from the records provided to them whether the alleged overpayments they sought to recover were based upon insurance or FEMA payments made before or after the homeowner's grant funds were disbursed.

48. On August 3, 2017, Defendants sent, or caused to be sent, a collection letter seeking the recovery of grant funds from Plaintiff Randolph in the amount of \$2,500. See, **Exhibit 4** hereto. The Randolph letter stated the amount of the "repayment amount [allegedly] due" but did not explain the basis of the alleged debt, nor indicate that it resulted from an alleged duplicative insurance payment. *Id.*

49. On February 9, 2018, Defendants sent, or caused to be sent, to Plaintiff Calogero a letter seeking to collect \$4,598.89 in an alleged grant overpayment. See, **Exhibit 5** hereto. The Calogero letter stated the amount of the repayment was due to misreported insurance proceeds. *Id.*

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50. In the Calogero collection letter, Defendants wrote in pertinent part:

Our office represents the State of Louisiana, Division of Administration, Office of Community Development-Disaster Recovery Unit (“Road Home”), in connection with certain Road Home Grant Funds (“Grant funds”) which you received. The amount due to Road Home for repayment is described above. Our client’s records indicate that you received more in total insurance proceeds than the amount used to calculate your Grant award. Since you have not repaid those additional insurance funds to Road Home in accordance with your Road Home Grant Agreement, you have breached your Grant obligations. Those obligations are clearly outlined in your Road Home Grant Agreement.

Please be advised that if you do not take any action to resolve this matter within ninety days after your receipt of this letter, Road Home may proceed with further action against you, including legal action, in connection with the full Grant repayment balance owed as outlined above. You may also be responsible for legal interest from judicial demand, court costs, and attorney fees if it is necessary to bring legal action against you.

This office is a debt collector. The purpose of this letter is to recover the Road Home Grant Funds repayment set forth above. Any information obtained as a result of this correspondence will be used for the purpose of recovering the Road Home Grant Funds repayment.

Id.

51. These collection letters sent by Defendant SCW to Plaintiff Calogero and Plaintiff Randolph were allegedly prepared by one of two attorneys, either Defendant Mary Catherine Cali or Defendant John C. Walsh. *See*, Exhibits 4, 5.

52. Plaintiff Randolph was profoundly upset by Defendants’ allegation of a debt that she does not believe she owes. However, Plaintiff Randolph was so alarmed by the threat of legal action and the imposition of interest, court costs, and attorneys’ fees that she commenced a dialogue with Defendants about the possibilities for repayment. Ultimately, Plaintiff Randolph commenced making payments of \$25 per month, an amount that burdens her limited retirement

income. Plaintiff Randolph has made, and continues to make, monthly payments on the alleged debt.

53. Defendants required Plaintiff Randolph to sign a form promissory note, drafted by Defendants, in order to qualify for the payment plan they negotiated with her; she executed that note on October 24, 2017. *See, Exhibit 6.* Defendants failed to advise her that by signing the note, she would revive the statute of limitations that had otherwise run against the commencement of any legal action against her for the alleged grant overpayment.

54. Plaintiff Calogero was confused about the allegations in Defendants' collection letter and was afraid that she would be sued for money she did not believe she owes, and could incur additional costs of interest and attorneys' fees, too. Therefore Plaintiff Calogero contacted legal counsel to assist her in dealing with Defendants. Through counsel, Plaintiff Calogero disputed receiving \$4,598.89 in insurance proceed overages.

55. On April 10, 2018, Defendants responded to Plaintiff Calogero's counsel with correspondence which included the following breakdown of the alleged debt: \$5,300 due to "duplicated" FEMA benefits, \$1,269.85 in "duplicated" homeowner insurance proceeds, plus a \$1,970.96 credit due to a decrease in an insurance penalty. *See, Exhibit 7* hereto.

56. Defendants' correspondence regarding Plaintiff Calogero's alleged debt was inaccurate and conflicting. Exhibits 5, 6. Defendants' initial collection letter claimed that Plaintiff Calogero's debt of \$4,598.89 arose only from insurance proceed overages. Exhibit 5. However, Defendants' subsequent verification claimed that the insurance overage was only \$1,269.85. Exhibit 7. Defendants further claimed new bases for the originally claimed \$4,598.89 debt: specifically a purported duplication of benefits from FEMA in the amount of \$5,300 and a recalculation of the flood insurance penalty. *Id.*

57. As purported proof of the duplicated FEMA benefits, Defendants provided a document detailing the FEMA benefits allegedly paid to Plaintiff Calogero. *See*, Exhibit 7. It appears this document was obtained from the FEMA Individual Assistance Center Applicant Inquiry, an internet database which lists all FEMA benefits provided to a consumer. This document has a print date of October 27, 2008, and indicates that Plaintiff Calogero received various amounts of assistance from FEMA over the several weeks immediately following Hurricane Katrina in 2005, including \$5,300 on November 8, 2005. Upon information and belief, this information has been accessible to Defendants and their principal(s), the OCD and the Road Home, since prior to the date of the grant to Plaintiff Calogero.

58. As for the alleged overpayment of homeowner's insurance benefits, Defendants claim that Plaintiff Calogero's "homeowner's insurance carrier electronically provided confirmation" of the amount paid. *See*, Exhibit 7. However, no copy of this electronic confirmation was provided to Plaintiff Calogero or her counsel. Neither was any information regarding the date of the alleged insurance payment provided. Given the electronic nature of the information, Plaintiff Calogero believes this information, if it exists, has also been available to Defendants since alleged payment of the insurance proceeds.

59. Plaintiffs' alleged debts related to the Road Home Program were incurred for personal, family or household purposes. The monies allegedly owed by Plaintiffs are "debts" as defined by the FDCPA, 15 U.S.C. § 1692a(5).

60. Defendants' debt collection practices harmed Plaintiffs because they deprived them of their statutory right as consumers to be free from the abusive debt collection practices prohibited by the FDCPA.

61. Defendants' debt collection practices harmed Plaintiffs because their incomplete or erroneous representations about the claimed debts impeded Plaintiffs' ability to assess the debt validity and impaired their ability to defend the claims.

62. Defendants' debt collection practices harmed Plaintiffs because they failed to say that legal action on the alleged debt was time-barred and that payment would revive the statute of limitations. Instead, Defendants threatened Plaintiffs with legal action if they did not repay the amounts claimed.

63. Defendants' debt collection practices harmed Plaintiffs because they failed to say that attorney's fees could be recovered only if Plaintiffs received the undisclosed insurance or FEMA payments before they received their grants.

64. Defendants' debt collection practices harmed Plaintiffs because they failed to advise that signing a promissory note would revive legal action on the alleged debt that was otherwise time-barred.

65. Defendants' debt collection practices harmed Plaintiffs because their communications were intimidating and caused them fear, anxiety, and emotional distress.

66. Defendants' debt collection practices have caused financial harm to Plaintiffs, who have expended resources to consult legal counsel and/or agreed to pay debts that they did not owe, and may never have owed.

67. Plaintiffs are informed and believe and therefore allege that Plaintiffs and the class members are entitled to actual and statutory damages and may have also suffered damages in other ways and to other extents not presently known to Plaintiffs, and not specified herein. Plaintiffs reserve the right to assert additional facts and damages not referenced herein, and/or to present evidence of the same at the time of trial.

CLASS ALLEGATIONS

68. Plaintiffs incorporate by reference and re-allege each and every allegation contained above, as though fully set forth herein.

69. Pursuant to Fed. R. Civ. P. 23, this action is brought as a class action on behalf of one class with at least two subclasses that can be identified on the basis of information currently available. Plaintiffs tentatively define the class and subclasses as follows, subject to future refinement of the definitions in light of discovery.

UMBRELLA CLASS DEFINITION: The class consists of all Louisiana residents who received a Road Home Homeowner's Grant for personal, family or household purposes to whom Defendants sent a collection letter in the form of Exhibits 4 and/or 5 within the one year period prior to the filing of this lawsuit, and who also fall into one or more of the following subclasses.

SUBCLASS DEFINITIONS:

- A. The first subclass consists of: those to whom Defendants sent a collection letter in the form of Exhibits 4 and/or 5, which letter did not itemize the alleged debt by category including insurance or FEMA benefits which duplicated the grant payment and/or did not state the source of the alleged duplicate payment.
- B. The second subclass consists of: those to whom Defendants sent a collection letter in the form of Exhibits 4 and/or 5 more than five years after the grant Agreement was signed which did not state that the alleged debt was not legally enforceable and that a payment would renew the debt.
- C. The third subclass consists of: those to whom Defendants sent a collection letter in the form of Exhibits 4 and/or 5 which stated that "you may also be responsible for . . . attorney fees."

D. The fourth subclass consists of: those to whom Defendants sent a promissory note in the form of Exhibit 6 obligating them to repay alleged grant overpayments, without advising that signing the instrument would revive any statute of limitations that had run against legal action on the alleged debt.

70. The class period begins one year prior to the date of the filing of the original complaint in this action for FDCPA violations.

71. Numerosity. The members of the proposed class are so numerous that joinder of all members is impracticable. Because of the widespread use and reliance on Road Home funds following the 2005 Hurricanes, and because the Road Home publishes notice online that homeowners may receive letters from Defendants, Plaintiffs believe the class includes more than 100 individuals. Although the precise number of class members is unknown to Plaintiffs, it is readily ascertainable upon review of Defendants' business records.

72. Commonality. Common questions of law and fact exist and predominate as to all members of the Class, including, *inter alia*, the following:

- A. Whether Defendants' conduct in connection with the mailing of Exhibits 4, 5 and similar letters to other consumers violates the FDCPA by failing to clearly and fairly communicate the character, amount, or legal status of the alleged debt.
- B. Whether the statute of limitations for any class member's alleged debt arising from a Homeowner's Grant has expired.
- C. Whether Defendants' conduct in connection with the mailing of Exhibits 4, 5 and similar letters to other consumers violates the FDCPA by failing to inform the consumer that the debt is legally unenforceable and/or that a payment toward the alleged debt would restart the statute of limitations.

- D. Whether Defendants' conduct in connection with the mailing of Exhibits 4, 5 and similar letters to other consumers violates the FDCPA by threatening the possible assessment of attorney's fees without determining whether suit would be brought, based on the timing of the alleged overpayment, under the subrogation agreement which allowed the assessment, or the affidavit which did not.
- E. Whether Defendants' conduct in connection with the mailing of a promissory note in the form of Exhibit 6 and similar notes to other consumers violates the FDCPA by failing to inform the consumer that signing the note and/or that making a payment toward the alleged debt would restart the statute of limitations.

73. Typicality. Plaintiffs' claims are typical of the claims of the class members because all have been affected by the same debt collection practices of Defendants. Plaintiffs are members of the Class they seek to represent.

74. Adequacy of Representation. Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs have no adverse interests to those of the members of the Class. Plaintiffs have retained counsel experienced in the prosecution of this type of class action litigation.

75. Superiority. Congress envisioned class actions as a principal means of enforcing the FDCPA. 15 U.S.C. § 1692k. Generally, the members of the class are unsophisticated consumers, whose rights will not be vindicated in the absence of a class action. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would require. In contrast, individualized litigation would: (a) create the danger of inconsistent or contradictory judgments arising from the same set

of facts, (b) increase the expense to all parties, a particular disadvantage because the damages suffered by individual class members may be relatively small compared to the expense of individual litigation, and (c) unnecessarily burden the court system with multiple adjudications of the common issues raised by this action, thereby clogging dockets and causing widespread delay. For all these reasons, a class action is superior to all other available means for the fair and efficient adjudication of this controversy.

76. Plaintiff intends to send notice to all members of the proposed class consistent with Fed. R. Civ. P. 23. Defendants maintain records and data to identify all class members.

77. Based on discovery, if the facts warrant, Plaintiffs will seek to certify the class under Rule 23(b) of the Federal Rules of Civil Procedure.

PLAINTIFFS' CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF BROUGHT BY PLAINTIFFS INDIVIDUALLY AND ON BEHALF OF THE CLASS VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. § 1692 *ET SEQ.*

(using false, deceptive or misleading means, in violation of 15 U.S.C. § 1692e and using unfair practices, in violation of § 1692f, in communications regarding the amount, character, and nature of the alleged debt)

78. Plaintiffs incorporate by reference and re-allege each and every allegation contained above, as though fully set forth herein.

79. Defendants' collection letter to Road Home grant recipients in the form of Exhibits 4 and 5 fails to fairly and clearly itemize the basis of the alleged debts, and therefore misrepresents the amount and character of the alleged debt in violation of 15 U.S.C. § 1692e, 15 U.S.C. § 1692e(2)(A), and 15 U.S.C. § 1692e(10).

80. Defendants' failure to fairly and clearly communicate the nature of Plaintiffs' alleged debts further constitutes an unfair or unconscionable means to collect or attempt to collect a debt, in violation of 15 U.S.C. § 1692f.

81. Defendants' failure to properly identify the basis of the alleged Road Home debts resulted in Plaintiffs' inability to knowledgeably assess the validity of the debt and impaired their ability to defend the claims.

82. Defendants' collection letters confused Plaintiffs.

83. Defendants' collection letters caused Plaintiffs emotional and mental distress.

84. Defendants' collection letters intimidated Plaintiffs because, *inter alia*, the letters threaten legal action and are from a law firm, signed by attorneys.

85. Plaintiffs consulted counsel and spent time and resources to try to learn the truth of the debt alleged in Defendants' letters.

86. Because she was confused, intimidated, and afraid, Plaintiff Randolph agreed to pay money that she does not believe she owes.

87. As a result of Defendants' violations of 15 U.S.C. § 1692 *et seq.*, Plaintiffs are entitled pursuant to 15 U.S.C. § 1692k to actual damages, statutory damages, and the costs of this action, together with attorneys' fees.

SECOND CLAIM FOR RELIEF
BROUGHT BY PLAINTIFFS INDIVIDUALLY AND ON BEHALF OF THE CLASS
VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT
(using false, deceptive or misleading means, in violation of 15 U.S.C. § 1692e and
using unfair practices, in violation of § 1692f
by collecting or attempting to collect time-barred debt)

88. Plaintiffs incorporate by reference and re-allege each and every allegation contained above, as though fully set forth herein.

89. Defendants violated the FDCPA, §§ 1692e and 1692f, by sending consumers letters in the form received by Plaintiffs as represented by Exhibits 4 and 5.

90. Defendants' representation that Plaintiffs had legally-enforceable obligations to repay time-barred debts constitutes: (a) a false representation of the legal status of a debt, in violation of 15 U.S.C. § 1692e(A)(2); (b) an impermissible threat to take an action that cannot legally be taken, in violation of 15 U.S.C. § 1692e(5); (c) the use of a false representation or deceptive means to collect or attempt to collect a debt, in violation of 15 U.S.C. § 1692e(1); and (d) an unfair or unconscionable means to collect or attempt to collect a debt, in violation of 15 U.S.C. § 1692f.

91. Defendants' threat to pursue legal action to collect a time-barred debt violates the prohibition against unfair or unconscionable debt collection practices in violation of 15 U.S.C. § 1692f because it intimidates consumers into making payment by convincing them that they are about to be sued.

92. Defendants' actions to recover allegedly overpaid federal funds brought them within the purview of the six-year statute of limitations provided by federal law, 28 U.S.C. § 2415.

93. Alternatively, Defendants' actions to recover alleged overpayments which Plaintiffs' grant Agreements obligated them to repay brought them within the purview of Louisiana Civil Code Article 3498 which provides that "Actions on instruments, whether negotiable or not, and on promissory notes, whether negotiable or not, are subject to a liberative prescription of five years."

94. Alternatively, Defendants' actions to recover grant funds based on Plaintiffs' alleged breach of their grant Agreements were subject to the liberative prescriptive period of ten years provided by Louisiana Civil Code Article 3499.

95. Documents provided from Defendants' files reveal that the State knew or should have known of Plaintiff Calogero's alleged breach of her grant Agreement more than ten years before Defendants issued a collection letter to her. On information and belief, reports of the alleged overpayments to all members of the proposed class were likewise made or available to the State more than five, six, or ten years before Defendants' collection process commenced. The documents necessary to demonstrate the State's notification of "duplicate" payments should be readily available through discovery.

96. As a result of Defendants' violations of 15 U.S.C. § 1692 *et seq.*, Plaintiffs are entitled pursuant to 15 U.S.C. § 1692k to actual damages, statutory damages, and the costs of this action, together with attorneys' fees.

THIRD CLAIM FOR RELIEF
BROUGHT BY PLAINTIFFS INDIVIDUALLY AND ON BEHALF OF THE CLASS
VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT
(using false, deceptive or misleading means, in violation of 15 U.S.C. § 1692e and
using unfair practices, in violation of § 1692f
by threatening to assess attorneys' fees in any legal action brought,
without determining whether any right to recover attorneys' fees existed)

97. Plaintiffs incorporate by reference and re-allege each and every allegation contained above, as though fully set forth herein.

98. Defendants violated the FDCPA, §§ 1692e, by sending consumers letters in the form received by Plaintiffs as represented by Exhibits 4 and 5.

99. Defendants' threat that attorney's fees might be assessed in any actions brought against Plaintiffs without Defendants' determining whether attorney's fees were legally recoverable constitutes: a) the use of a false representation or deceptive means to collect or attempt to collect a debt, in violation of 15 U.S.C. § 1692e(1); b) the threat to take legal action that

cannot legally be taken, in violation of 15 U.S.C. § 1692e; and c) an unfair or unconscionable means to collect or attempt to collect a debt, in violation of 15 U.S.C. § 1692f.

100. As a result of Defendants' violations of 15 U.S.C. § 1692 *et seq.*, Plaintiffs are entitled pursuant to 15 U.S.C. § 1692k to actual damages, statutory damages, and the costs of this action, together with attorneys' fees.

FOURTH CLAIM FOR RELIEF
BROUGHT BY PLAINTIFFS INDIVIDUALLY AND ON BEHALF OF THE CLASS
VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT
(using false, deceptive or misleading means, in violation of 15 U.S.C. § 1692e and
using unfair practices, in violation of § 1692f
by failing to advise that signing a promissory note and/or
making payment to repay the alleged debt would restart the statute of limitations)

101. Plaintiffs incorporate by reference and re-allege each and every allegation contained above, as though fully set forth herein.

102. Defendants violated the FDCPA, §§ 1692e, 1692f by sending consumers a promissory note in the form received by Plaintiff Randolph as represented by Exhibit 6.

103. Defendants' requirement that Plaintiffs sign the promissory note in exchange for staged repayments of the alleged debt, without advising that by signing the note and/or making any payment Plaintiffs would restart the running of the statute of limitations is: a) the use of a false representation or deceptive means to collect or attempt to collect a debt, in violation of 15 U.S.C. § 1692e(2) and (10); and b) an unfair or unconscionable means to collect or attempt to collect a debt, in violation of 15 U.S.C. § 1692f.

104. As a result of Defendants' violations of 15 U.S.C. § 1692 *et seq.*, Plaintiffs are entitled pursuant to 15 U.S.C. § 1692k to actual damages, statutory damages, and the costs of this action, together with attorneys' fees.

DEMAND FOR JURY

105. Plaintiffs, individually and on behalf of the proposed class, hereby demand a trial by jury for all issues in this case.

PRAYER FOR RELIEF

WHEREFORE, having set forth their Complaint, as amended, Plaintiffs Iris Calogero and Margie Nell Randolph, individually and on behalf of the proposed class, pray that this Court will:

- (1) Certify Plaintiffs' claims to proceed as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- (2) Designate Plaintiffs as Class Representatives and designate undersigned counsel as Class Counsel;
- (3) Enter Judgment declaring that the practices complained of herein are unlawful under the FDCPA and that Defendants violated the rights of Plaintiffs and the class under the FDCPA;
- (4) Award actual damages incurred by Plaintiffs and the class pursuant to 15 U.S.C. § 1692k(a);
- (5) Award statutory damages to Plaintiffs and the class, pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- (6) Enter judgment casting each Defendant named herein liable for damages up to the maximum authorized by 15 U.S.C. § 1692k(a)(2)(B);
- (7) Award reasonable attorneys' fees for all services performed by counsel;
- (8) Award reimbursement for all costs and expenses incurred; and
- (9) Grant Plaintiffs and the Class any other legal and equitable relief that this Court deems just and proper.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Respectfully Submitted, June 15, 2021:

/S/ Margaret E Woodward

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*Attorneys for Plaintiffs,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of June, 2021, a copy of the above and foregoing and all exhibits referenced therein were filed electronically with the Clerk of Court and served on all counsel of record using the CM/ECF system.

I FURTHER CERTIFY that counsel shall deliver a hard copy of the foregoing pleading and exhibits to chambers at 500 Poydras Street, Room C-367 in compliance with this Court's Scheduling Order issued September 28, 2020.

/S/ Margaret E Woodward